IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cri. Appeal No. 688 of 2000

Date of Decision: 25th October, 2007

State of H.P.		Appellant
	Versus	
Jatinder Kumar		Respondent.

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant:	Mr.Ashok Chaudhary, Addl. Advocate General.
For the respondent:	Mr. Bhuvnesh Sharma, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 4th February, 2000 passed by Chief Judicial Magistrate, Bilaspur, H.P. in Case No. 333-1 of 1998, titled as State vs. Jatinder Kumar, acquitting the accused of the charged offence.

As per the case of the prosecution on 9th January, 1998 at about 6.30 p.m., when the complainant Smt. Veena Devi (PW-1) was crossing the road near ITI, Bilaspur, the accused who was driving scooter bearing registration No. HP-24-0159 came at a high speed and hit the complainant, thus causing injuries on her right leg and arm. The matter was reported to the police and HC Nain singh (PW-4) reached at the spot and recorded the statement of the complainant Ext.PA, on the basis of

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

which FIR dated 10th January, 1998 was registered with Police Station Sadar, Bilaspur, under Sections 279, 337, IPC. The site plan (Ext.PW-4/B) was prepared and the complainant was got medically examined. The vehicle was also mechanically examined by C. Lekh Raj (PW-6) and report (Ext.PW-6/A) was also obtained.

After completion of the investigation, challan was presented in the court for trial. Notice of Accusation was put to the accused for an offence under Section 279, 337 and 338, IPC, to which he did not plead guilty and claimed trial.

In order to prove its case, prosecution examined six witnesses and statement of the accused under Section 313, Cr.P.C. was also recorded.

The Court below, after examining the material on record came to the conclusion that the prosecution had failed to prove its case beyond doubt and acquitted the accused of the charged offence.

In all, prosecution has examined six witnesses. Smt. Veena Devi (PW-1) is the injured complainant and Suresh Kumar (PW-2) and Shri Sunder Singh (Pw-5) are the spot witnesses. Tara Chand (PW-3), HC Nain Singh (PW-4) and C. Lekh Ram (PW-6) are the police officials, who have recorded the statement of the complainant, registered the FIR and collected the incriminating material and completed the investigation. Importantly, no doctor has been examined by the prosecution.

Complainant (PW-1) has stated that at about 6.40 p.m. in the evening while she was walking on the side of the road, accused who was driving the scooter came at a great speed and hit her. As a result of which, she suffered injuries on his arm and leg. In cross-examination, she

has admitted that there were two children accompanying her at the time of incident and the accident took place at the spot where there was a curve. PW-2 has, however, given a totally different version. PW-2 has corroborated the version of PW-1 about the occurrence of the accident, but, however, he has denied that there were children alongwith the complainant at the time of the incident or that the accident took place at a place where there was a curve. To this extent statements of both PW-1 and PW-2 stand contradicted.

PW-5, has yet given a totally different version. He has deposed that he witnessed the occurrence of the accident and the accused was not at fault at all. According to him, one of the children accompanying the complainant (PW-1) started crossing the road when suddenly she ran after the child as a result of which she banged into the scooter being driven by the accused at normal speed. According to him, the accident took place purely due to the fault of the child and the lady. This witness has been cross-examined by the Public Prosecutor. But, however, on a different point altogether. There is no cross-examination of his earlier version which goes unrebutted. In cross-examination he has admitted that the accused was driving the scooter on his side. It was he who had helped the lady get up after the accident. According to him, PW-4 reached much after the accident had taken place. As there is nothing on record to impeach the credibility of PW-5, therefore his statement cannot be disregarded.

Further, story of the prosecution does not inspire confidence for the reason that both PW-1 and PW-2 have admitted that the accident took place at a place where there was a curve. Perusal of site

plan Ext.PW-4/B reveals that there is no curve at point 'B' where the accident took place. In fact it is shown as a straight road. The accident took place during winter season in the evening at about 6.45 p.m. It has come on record through the statement of PW-5 that the visibility was poor and one could not see beyond 15 – 20 ft.

For all the aforesaid reasons, it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt. There being two versions on record and the one favouring the accused is accepted.

The accused has been acquitted by the Court below. The Court below has completely appreciated the material on record and there is no perversity in the same. I see no reason to interfere with the judgment rendered by the Court below. The appeal is accordingly dismissed. Bail bonds are discharged.

25th October, 2007
(C)

(Sanjay Karol),
Judge